Not To Be Published:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

PHILIP NELSON, Plaintiff, vs. LONG LINES LTD., a South Dakota Corporation, and CHARLES LONG, in his individual capacity, Defendants.	No. C02-4083-MWB **MEMORANDUM OPINION AND ORDER REGARDING DEFENDANTS' MOTION TO STRIKE, MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO DISMISS COUNT THREE**

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I. INTRODUCTION

Plaintiff Philip Nelson ("Nelson") has filed a 13 page, 147 paragraph complaint alleging that his former employer, defendants' Long Lines LTD., a South Dakota Corporation, and Charles Long, in his individual capacity (collectively "Long"), (1) discriminated against him because of his age, (2) failed to pay him overtime compensation, (3) violated, during his employment, an implied covenant of good faith and fair dealing, (4) should be estopped from denying Nelson the benefits of Long's promises, and (5) was unjustly enriched at Nelson's expense. Long contends that Nelson's complaint fails to comply with the brevity and simplicity requirements of Federal Rule of Civil Procedure 8. Long requests that the court strike certain paragraphs, pursuant to Federal Rule of Civil Procedure 12 (f), or, in the alternative, Long requests the court direct Nelson to file more definite statements for certain paragraphs. In addition, Long requests that the court strike Count III for failing to state a claim upon which relief may be granted.

II. BACKGROUND

Nelson worked for Long and allegedly performed a variety of duties, including but not limited to grounds keeper, general maintenance, security, receptionist, and personal valet. *see* Comp. ¶¶ 7, 9, 11, 21, and 27. Nelson alleges that he was abruptly terminated on May 2, 2001. Nelson further alleges that his duties were assigned to two individuals and that one of these individuals was 30 years younger and the other individual was 10 years younger than Nelson. *see* Comp. ¶ 69. Nelson filed a complaint with this court on September 19, 2002. The complaint contains 147 paragraphs. After dispensing with

jurisdictional and venue averments, *see* Comp. ¶¶ 1-6 at 1, Nelson proceeds to lay out, in approximately five pages, the "Facts" covering Nelson's work history with Long, beginning in 1989, the date he was first hired by Long, and encompassing years 1989 to 2001. *see* Comp. ¶¶ 7-65 at 2-6. After his work history is set out, Nelson lays out his claims against Long: "Count I, Age Discrimination under Federal Law;" "Count II, Overtime Compensation;" "Count III, Covenant of Good Faith and Fair Dealing DURING Employment;" "Count IV, Promissory Estoppel;" and "Count V, Unjust Enrichment." *see* Comp. ¶¶ 66-138 at 7-12. Finally, the complaint states a nine paragraph prayer for relief requesting injunctive relief, compensatory damages, attorney fees and also includes a paragraph giving notice of Nelson's intent to petition the court to add punitive damages. *see* Comp. ¶¶ 1-9 at 12.

On October 18, 2002, rather than answering Nelson's complaint, Long filed "Defendants' Motion to Strike, Motion for a More Definite Statement, and Motion to Dismiss Count Three" pursuant to Rules 8, 12(b)(6), and 12(f). Long contends that the complaint fails to comply with Rule 8(a)(2)'s requirement that the complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief" and Rule 8(a)(3)'s requirement for "a demand for judgment for the relief the pleader seeks." Fed. R. Civ. P. 8(a)(2), (3). Not only does Long contend the complaint violates Rule 8, but Long asserts that it will suffer prejudice as a result of this violation because it will be required to engage in discovery of matters that are outside of the limitations period and involve predecessor employers. Further, Long contends that "Count III, Covenant of Good Faith and Fair Dealing During Employment," should be dismissed because it fails to state a claim upon which relief may be granted because the Iowa Supreme Court has repeatedly rejected this cause of action and the complaint contains no set of facts that would entitle Nelson to relief. Further, Long contends that paragraphs, 7-18, 20-28, 30, 38-43, 49-50, 52, 70-71,76-78, 92, 97-98, 105-119, of the complaint should be stricken pursuant to Rule

12(f) because the paragraphs contain "redundant, immaterial, [and] impertinent" matter. In addition, Long contends that the complaint covers matters outside of the statute of limitations period for all causes of action, includes evidentiary matters, and contains conclusions of law not appropriate for inclusion in a complaint. Alternatively, Long requests that if the identified paragraphs are not stricken by the court, the court require that Nelson provide a more definite statement as to paragraphs 25-40, 58-63, 92, 107, 110-112 and 130-133 as to the time the alleged conduct occurred.

On November 15, 2002, Nelson filed his opposition to defendants' motions. On November 19, 2002, Nelson filed his resistance and memorandum in opposition of defendants' motions disputing Long's contentions. On November 25, 2002, Long filed its reply and reiterated defendants' motion to strike, motion for more definite statement and motion to dismiss count three. The parties have not requested oral arguments and the court will now consider the defendants' motion to strike, motion for more definite statement and motion to dismiss count three fully submitted.

III. LEGAL ANALYSIS

A. Rule 8

Long asserts that the complaint fails to comply with Rule 8(a)(2)'s requirement that the complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief" and 8(a)(3)'s requirement for "a demand for judgment for the relief the pleader seeks." Fed. R. Civ. P. 8(a)(2), (3). Long asserts the complaint is excessively long and neither "short" nor "plain."

1. Rule 8(a)(2)

The Federal Rules employ a notice-based pleading system. *See Schmedding v. Tnemec Co., Inc.*, 187 F.3d 862, 865 (8th Cir. 1999); *In re NationsMart Corp. Sec. Litig.*,

130 F.3d 309, 316 (8th Cir. 1997), *cert. denied sub nom. NationsMart v. Carlon*, 524 U.S. 927, 118 S.Ct. 2321, 141 L.Ed.2d 696 (1998); *Pulla v. Amoco Oil Co.*, 72 F.3d 648, 658 (8th Cir. 1995). Federal Rule 8(a)(2) requires a plaintiff to plead only "a short and plain statement of the claim showing that the pleader is entitled to relief. . . ." *See Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957) ("[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts on which he bases his claim."). As the Eighth Circuit Court of Appeals has instructed: "The essential function of a complaint under the Federal Rules of Civil Procedure is to give the opposing party 'fair notice of the nature and basis or grounds for a claim, and a general indication of the type of litigation involved.'" *Hopkins v. Saunders*, 199 F.3d 968, 973 (8th Cir.1999) (quoting *Redland Ins. Co. v. Shelter Gen. Ins. Cos.*, 121 F.3d 443, 446 (8th Cir.1997)). Thus, a plaintiff is not required to plead all the facts underlying the alleged claim, the Rules simply require a "short and plain statement of the claims showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

However, in contrast to the cases cited by Long, involving excessively long complaints, Nelson's complaint is not excessively long, nor is it complex or confusing. *See McHenry v. Renne et. al*, 84 F.3d 1172, 1174 (9th Cir. 1996) (involving a 53 page complaint which failed to identify which claims went with which defendants); *see also Kuehl v. FDIC*, 8 F.3d 905 (1st Cir. 1993) (involving a complaint containing 358 paragraphs). Rule 8 does not prohibit a party from providing a reasonably detailed description of the facts involved, nor does it prohibit a party from providing the context

and history from which the alleged claims arise. Therefore, the court finds no violation of Rule 8(a)(2).

2. Rule 8(a)(3)

Long argues that pursuant to Rule 8(a)(3), Nelson is required to state "a demand for judgment for the relief the pleader seeks." Fed. R. Civ. P. 8(a)(3). Long contends that

the paragraphs included in Nelson's prayer, that reference amounts, are inappropriate and unnecessary and prejudicial to Long, "inasmuch as the Plaintiff's claim is based on federal question, not diversity jurisdiction." Defendant's Motion to Strike ¶ x. at 4.

However, Nelson argues that the Iowa rules of pleading remedies do not preempt the Federal Rules because the Iowa common law claims alleged are supplemental to the federal claim pursuant to 29 U.S.C. 621 *et. seq.* and 29 U.S.C. 201 *et. seq.* and that the Federal Rules do not prohibit Nelson from referencing amounts under the Federal Rules. The court agrees with Nelson that referencing an amount in his demand is not prohibited by the Federal Rules nor is it prejudicial Long. Therefore, the court finds no violation of Rule 8(a)(3).

B. Long's Motion to Strike

Long contends that the complaint covers matters outside of the statute of limitations period for all causes of action, includes evidentiary matters, and contains conclusions of law not appropriate for inclusion in a complaint.

1. Standards for Motions to Strike

Rule 12(f) states, in pertinent part, that "the court *may* order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous material." Fed. R. Civ. P. 12(f) (emphasis added). In ruling on a Rule 12(f) motion, the court has considerable discretion. *See Nationwide Ins. Co. v. Central Missouri Electric Coop., Inc.*, 278 F.3d 742 (8th Cir. 2001). The Eighth Circuit Court of Appeals has previously interpreted Rule 12(f) and held that because the rule is stated in the permissive, it has always been understood that the district court enjoys "liberal discretion" thereunder. *Thor Corp. v. Automatic Washer Co.*, 91 F.Supp. 829, 832 (D.C. Iowa 1950). However, despite this broad discretion, striking a party's pleadings or striking identified paragraphs in a party's pleadings, is an extreme measure, and, as a result, the Eighth Circuit has also

found that "[m]otions to strike under Fed. R. Civ. P. 12(f) are viewed with disfavor and are infrequently granted." *Lunsford v. United States*, 570 F.2d 221, 229 (8th Cir. 1977) (citing 5 Wright & Miller, Federal Practice and Procedure: Civil § 1380 at 783 (1969)), *see also* 2 James Wm. Moore et al., Moore's Federal Practice § 12.37[1] (3d ed. 2000) ("Courts disfavor the motion to strike, because it 'proposes a drastic remedy.'"). Nevertheless, a motion to strike "should be granted if it 'may have the effect of making the trial of the action less complicated, or [it] may have the effect of otherwise streamlining the ultimate resolution of the action.'" *U.S. v. Dico, Inc.*, 189 F.R.D. 536 (S.D. Iowa 1999) (quoting *Kelley v. Thomas Solvent Co.*, 714 F.Supp. 1439, 1442 (W.D. Mich. 1989)). Therefore, when the pleading does contain redundant, immaterial or impertinent statements the court may strike those statements from the pleading. *See* Fed. R. Civ. P. 12(f). However, some courts, such as the Seventh Circuit Court of Appeals, have held that "mere redundancy or immateriality is not enough to trigger the drastic measure of striking the pleading or parts thereof; in addition, the pleading must be prejudicial to the defendant." *See Hardin v. American Electric Power*, 188 F.R.D. 509, 510 (S.D. Ind. 1999) (citing *Talbot v. Robert Matthews Distrib. Co.*, 961 F.2d 654, 664 (7th Cir. 1992).

2. Application of Standards

i. ***Immaterial, impertinent and redundant matter.*** Long requests the court strike certain paragraphs in the complaint, pursuant to Fed. R. Civ. P. 12(f). As stated above, Rule 12(f) provides that the court may "order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Long contends that paragraphs 7-18, 20-28, 30, 38-43, 49-50, 52, 70-71, 76-78, 92, 97-98, 105-11, 125-26, 129-33, and 136-37 of the complaint should be stricken because these paragraphs contain one or more of the following defects: irrelevant matter, immaterial matter, impertinent matter, and/or redundant matter. Nelson contends that these paragraphs provide

the history and background of Nelson's alleged employment relationship with Long, including alleged actions taken and representations made by Long.

The court finds that these paragraphs provide history and background information and are not redundant, immaterial or impertinent, therefore, Long's motion to strike as to these paragraphs is denied.

ii. Prejudice. Long contends that paragraphs 7, 9, 10, 13, 20, 22, 23, 28, 38-40, would require discovery of "predecessor employers" and would be prejudicial to the defendants because it would require discovery of events that occurred outside of the limitations period. This court is inclined to agree with the findings of other courts that to "trigger the drastic measure of striking the pleading or parts thereof" those portions of the pleading must not only be immaterial or redundant, but "prejudicial to the defendant." *See Hardin v. American Electric Power*, 188 F.R.D. 509, 510 (S.D. Ind. 1999) (citing *Talbot v. Robert Matthews Distrib. Co.*, 961 F.2d 654, 664 (7th Cir. 1992).

This case involves only one plaintiff and the defendants are Long Lines, a corporation, and Charles Long, an individual. The court is persuaded by Nelson's argument that this case involves a "very small universe of less than 10 people and a small number of documents." The predecessor employers referred to in the complaint, Village West, Manhattan Beach, Leisure Property, and Arnold's Park, were all businesses alleged to be owned and/or operated by defendant Charles Long at the time Nelson was employed to work at these businesses. In this case, defendant Long, alleged owner/employer, hired Nelson to be his employee and continued to retain Nelson, even after Long changed businesses. Since Long, as the employer, continued to retain Nelson, as an employee, after each business change, it is not unreasonable to expect that Long would be able to respond to the allegations made against the businesses he is alleged to have previously owned, *i.e.* "the predecessor employers," and considering that Long's involvement was such that he was arguably the decision-maker of those "predecessor employers" at the time Nelson was

employed, the court finds that requiring Long to respond to Nelson's averments would not prejudice Long. Therefore, Long's motion to strike as to these paragraphs is denied and Long will be required to respond to these paragraphs.

iii. Events occurring outside the limitations period. Long asserts that paragraphs 8-18, 20-40, 42-43, 122-23 allege events that occurred before July 2000 and are outside the limitations period, therefore these events are not actionable nor are these events pertinent to Nelson's claims. Long argues that even if the alleged conduct that occurred before the limitation period could be background evidence it is not appropriate or relevant to include in a complaint. Long contends that the untimely allegations should be stricken from the complaint because these allegations are not actionable. In support of this proposition, Long directs the court to *Nat'l Railroad Passenger Corp. v. Morgan*, 122 S.Ct. 2061, 153 L.Ed.2d 106 (2002). In response, Nelson argues regardless of whether the alleged events took place outside of the limitations period, the information is relevant as "background evidence" and should not be stricken. Plaintiff's Resistance, Doc. No. 11 at 3.

This court has previously discussed *Morgan*, and will not repeat that entire discussion here. *See Baker v. John Morrell*, 220 F. Supp.2d 1000, 1011-14 (N.D. Iowa 2002). In *Baker*, a plaintiff sought to admit evidence of events predating the limitations period, not as a basis for an award of damages, but as relevant evidence in determining whether or not the acts within the [limitations period] were discriminatory. *Id.* at 1012-13. This court held, relying on *Morgan* and *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558, 97 S. Ct. 1885, 52 L.Ed.2d 571 (1977), that in *Morgan* the Supreme Court "reaffirmed its prior position in *Evans* and concluded that Title VII does not bar 'an employee from using the prior acts as background evidence in support of a timely claim.'" *Morgan*, 122 S.Ct. at 2072; *see also Kline v. City of Kansas City, Mo., Fire Dep't.*, 175 F.3d 660, 677 (8th Cir. 1999) (stating that a plaintiff's claim of discrete acts of discrimination within the limitations

period can rely on evidence from outside the applicable period and that this evidence is admissible as relevant background information, but not as a basis for liability). This court stated in *Baker* that "allegations of discriminatory conduct predating the limitations period may be used as background evidence in support of [plaintiff's] timely claims against [defendant]." *Baker*, 220 F.Supp.2d at 1013.

The court once again reaffirms *Evans*, *Morgan*, and *Baker*, in that, events older than 300 days are deemed admissible as relevant background evidence, in both discriminatory and hostile work environment case. Therefore, the alleged treatment of Nelson and the alleged events that occurred outside of the limitations period may be used as background evidence in support of Nelson's timely claims. The history of an employment relationship and the progression of events are admissible in a complaint alleging a claim of a violation of federal employment law, because, if nothing else, these areas once investigated, potentially provide insight into the motivation behind an employer's actions that allegedly took place within the limitations period. Therefore, Long's motion to strike as to these paragraphs is also denied.

iv. Legal conclusions. Long asserts that paragraphs 113-19 are legal conclusions and should be stricken from the complaint. Long's assertion is simply incorrect. There is no authority that entitles counsel for Long to decide for herself that no answer is required because she considers an averment to be a "legal conclusion," and it is equally impermissible to refuse to answer an averment on the ground that counsel has decided that an averment is a "legal conclusion" rather than because that averment is untrue (if it really is). The Supreme Court has made it plain that "legal conclusions" play a recognized role in the "notice pleading regime that is embodied in the Federal Rules of Civil Procedure." *see Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A litigant must respond substantively to every averment, by definition including what the litigant may regard as "legal conclusions," in a complaint. *Id; see also Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (concluding that a complaint contains "both factual allegations and legal

conclusions"). Therefore, Long's motion to strike, as to these paragraphs is also denied.

C. Long's Motion For More Definite Statement

Long requests, in the alternative to his motion to strike, that the court require Nelson to provide a more definite statement regarding the time that the alleged conduct discussed in paragraphs 25-40, 58-63, 92, 107, 110-12 and 130-33 occurred. This court has previously reviewed the standards of Federal Rule of Civil Procedure 12(e) regarding a motion for more definite statement in *Dethmers Mfg. Co., Inc. v. Automatic Equip. Mfg. Co.*, 23 F. Supp. 2d 974 (N.D. Iowa 1998), stating:

> Rule 12(e) of the Federal Rules of Civil Procedure provides as follows:
>
> > If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.
>
> Fed. R. Civ. P. 12(e). Commentators state that "[t]he situations in which a Rule 12(e) motion is appropriate are very limited." 5A Wright & Miller, Federal Practice and Procedure § 1377 (1990). Furthermore, "even though a complaint is not defective for failure to designate the statute or other provision of law violated, the judge may in his discretion, in response to a motion for more definite statement under Federal Rule of Civil Procedure 12(e), require such detail as may be appropriate in the particular case, and may dismiss the complaint if his order is violated." *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996).

In this situation, Nelson is not required to plead time and place with particularity in order to withstand a motion to dismiss, however, the court is going to grant Long's motion for a more definite statement regarding time, given that the allegations in question span several years. *see Bankest Imports, Inc. v. ISCA Corp.*, 717 F.Supp. 1537 (S.D.Fla.1989). Further, for the purpose of testing sufficiency of a pleading, time may be material matter in ascertaining whether a cause of action is barred by the statute of limitations. *Kincheloe v. Farmer*, 214 F.2d 604 (7th Cir. 1954), *certiorari denied* 75 S.Ct. 306, 348 U.S. 920, 99 L.Ed. 721. The court finds that, as to these paragraphs, the time-frame involved is "vague" and "ambiguous" and that Long "cannot reasonably be required to frame a responsive pleading." Fed. R. Civ. P. 12(e). It is not unreasonable to provide Long with an approximate time-frame, as to the year(s), when the alleged events occurred. Long's motion for more definite statement is granted and Nelson shall have until and including June 25, 2003 to file a more definite statement regarding the stated paragraphs.

D. Long's Motion To Dismiss

Long argues that pursuant to Rule 12(b)(6), Count III - "Covenant of Good Faith and Fair Dealing DURING employment," fails to state a claim upon which relief may be granted because it sets forth a cause of action that has been repeatedly rejected by the Iowa Supreme Court. Further, Long asserts that Nelson had no implied contract and that the complaint sets forth no set of facts that would entitle Nelson to relief.

1. Standards for Motions to Dismiss

The issue on a motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) is not whether a plaintiff will ultimately prevail, but rather whether the plaintiff is entitled to offer evidence in support of his or her claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). In considering a motion to dismiss under Rule 12(b)(6), the court must assume that all facts alleged in the plaintiff's complaint are true

and must liberally construe those allegations. *St. Croix Waterway Ass'n v. Meyer*, 178 F.3d 515, 519 (8th Cir. 1999) ("We take the well-pleaded allegations in the compliant as true and view the complaint in the light most favorable to the plaintiff."). Rule 12(b)(6) affords a defendant an opportunity to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true. Under this standard, a complaint should be dismissed only where it appears that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Knapp v. Hanson*, 183 F.3d 786, 788 (8th Cir. 1999) ("A motion to dismiss should be granted only if 'it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief.'") (quoting *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986), and citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In applying this standard, the court must presume all factual allegations in the complaint as true and draw all reasonable inferences in favor of the non-moving party. *E.g., Whitmore v. Harrington*, 204 F.3d 784, 784 (8th Cir. 2000); accord *Cruz v. Beto*, 405 U.S. 319, 322 (1972); *Anderson v. Franklin County, Mo.*, 192 F.3d 1125, 1131 (8th Cir. 1999); G*ross v. Weber*, 186 F.3d 1089, 1090 (8th Cir. 1999); *Midwestern Mach., Inc. v. Northwest Airlines, Inc.*, 167 F.3d 439, 441 (8th Cir. 1999); *Valiant-Bey v. Morris*, 829 F.2d 1441, 1443 (8th Cir. 1987).

2. Application of Standards

Long argues that Nelson was an at-will employee and that there was no implied contract. Further, Long argues that Iowa law does not recognize "good faith and fair dealing" in employee-employer situations. The question before the court, at this stage of the proceedings, is whether "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Handeen v. Lemaire*, 112 F.3d 1339, 1347 (8th Cir. 1997) (quoting *Hishon v. King*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984)). In response, Nelson argues he had an implied contract with Long and that Long violated the covenant of good faith and fair dealing, during employment,

recognized in all contracts.

Long is correct that the Iowa Supreme Court has rejected "good faith and fair dealing" in employment situations, citing *Porter v. Pioneer Hi-Bred Int'l., Inc.*, 497 N.W.2d 870, 871 (Iowa 1993); *French v. Foods, Inc.*, 495 N.W.2d 768, 771 (Iowa 1993); *Grahek v. Voluntary Hosp. Coop. Ass'n of Iowa, Inc.*, 473 N.W.2d 31, 34 (Iowa 1991); *Fogel v. Trustees of Iowa Colleges*, 446 N.W.2d 451, 456-57 (Iowa 1989), however, each of these cases involved a rejection of such a cause of action in the employment context of discharge and termination, where, here, the claim for relief is for a breach "during employment" of an implied contract's covenant of "good faith and fair" dealing. This claim is not the same as a claim for relief for a breach of "good faith and fair dealing" for wrongful discharge or termination in an employment situation. These decisions say nothing about whether a claim for a breach "during employment" of the covenant of "good faith and fair dealing" is cognizable under Iowa law. There is a distinction, though perhaps subtle, between an employer allegedly breaching the covenant of "good faith and fair dealing" in the termination of an at-will employee and the treatment, *i.e.*, the alleged breaching of the covenant of "good faith and fair dealing" of a contract with said employee "during" the term of his employment.

Iowa law does recognize that there is an implied duty of good faith and fair dealing recognized in all contracts. *See* Restatement (Second) of Contracts § 205 (1981). The Iowa cases cited by both parties, while not clearly on point, indicate that although Iowa does not recognize "good faith and fair dealing" in the employment context of an at-will employee's termination or discharge, Iowa courts have not yet been provided the opportunity to consider whether a breach of "good faith and fair dealing" should be recognized "during" employment. None of the cases cited by the parties involved an employee alleging a breach, "during employment," of an implied contract of the covenant of good faith and fair dealing by an employer.

Long argues that Nelson was an at-will employee and there was no implied contract between Long and Nelson. Nelson alleges that he "had a contract with [Long] wherein it promised to pay [Nelson] based on 40 hours of work per week. The original agreement was at-will, but was nonetheless a contract where-in only the term of duration was indefinite." Comp. ¶ 105. Nelson further alleges that Long modified the original contract when it imposed additional duties exceeding the time expectation of the original understanding, imposed obligations to perform matters in the nature of personal valet, and requested Nelson reside on the premises to be available seven days a week. Comp. ¶ 106, 108, 110. Nelson also alleges "the owner affirmatively expressed to [Nelson] his understanding that [Nelson] would like to work until he was 65," (Comp. ¶ 107) and based upon his dealings with Long and the alleged implied contract between the parties Nelson sold his property, supplied and used his own tools and machinery[1] and invested $13,000 in garden and related materials. *see* Comp. ¶¶ 59, 61 at 6. These alleged facts, if true, may demonstrate consideration on the part of Nelson.[2] An at-will employee agreement may have all the essential elements

[1] Nelson alleges as an employee he supplied and used his own tools and machinery, including: a) tractor with plow b) disk and mower, c) sod cutter, d) blue bird grass seeder, e) weed sprayer, f) roto-tillers, g) pruning equipment and h) riding lawnmower.

[2] The Eighth Circuit Court of Appeals has held that on a contract claim, brought in Iowa, an at-will employee could not enforce an employer's promise to promote merely by continuing to perform her job. *Rouse v. Boehringer Mannheim Corp.*, 108 F.3d 859 (8th Cir. 1997). In *Rouse*, the employee acknowledged that she was an at-will employee, but asserted that continuing to work was enough consideration to make her employer's promise enforceable. The Eighth Circuit Court of Appeals found Rouse had not provided evidence of sufficient consideration under Iowa law to enforce the promise. In Iowa, "something more than a promise to continue employment is needed to remove the employment relationship from the reach of Iowa's at-will doctrine." *Id.* at 860.

of a valid contract: offer, acceptance, and consideration.[3] Whether Nelson did or did not have an implied contract is a question not appropriately resolved on a motion to dismiss. At this stage of the proceedings the question before the court is whether "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Handeen,* 112 F.3d at 1347 (quoting *Hishon*, 467 U.S. at 73, 104 S.Ct. 2229). The standard is that a motion to dismiss should be sustained *only* where it appears that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

At this time the court finds that there is some ambiguity as to whether Iowa would recognize, depending on the facts of the case, an employee's right to bring such a claim for relief for a breach "during employment" of an implied contract's covenant of "good faith and fair dealing." In this circumstance, it is premature for the court to certify a question, as requested by Nelson, to the Iowa Supreme Court because the question before this court on a motion to dismiss is whether "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Handeen*, 112 F.3d at 1347 (quoting *Hishon,* 467 U.S. at 73, 104 S.Ct. 2229). Since it is not clear that no relief could be granted under these alleged facts, the motion to dismiss is denied.

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[3] Although not exactly on point "[t]here is a class of cases in which sufficient consideration to uphold a contract for permanent, or life employment, or employment so long as the employee chooses, has been found. These are cases in which the servant has been found to have paid something for the promise of the employment, in addition to his agreement to render services." *Hanson v. Central Show Printing Co., Inc.*, 130 N.W.2d 654, 658 (Iowa 1964). In one such case the agreement was not just the hiring of the employee but the employee also paid half of the advertising and sales costs and all of his own traveling expenses. *Thompson v. Miller*, 100 N.W.2d 410, 412 (Iowa 1960).

IV. CONCLUSION

For the foregoing reasons, Long's motion to strike is denied, Long's motion to dismiss Count III is denied, and Long's motion for more definite statement is granted. As previously stated, Nelson shall have to and including June 25, 2003 to file more definite statements as to the time that the alleged conduct discussed in paragraphs 25-40, 58-63, 92, 107, 110-12 and 130-33 occurred.

IT IS SO ORDERED.

DATED this 11th day of June, 2003.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA